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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 PARNELL COLVIN,

11 Plaintiff,

12 vs.

13 M.J. DEAN CONSTRUCTION, INC,

14 Defendant.

Case No. 2:20-cv-01765-APG-EJY

**DEFENDANT'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

(Oral argument requested)

Action filed on September 22, 2020

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16 Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant M.J. Dean
17 Construction, Inc. ("Defendant" or "M.J. Dean"), hereby moves to dismiss the Fourth Cause of
18 Action for negligent hiring, training and supervision in Plaintiff's First Amended Complaint
19 ("FAC") filed by Plaintiff Parnell Colvin ("Plaintiff" or "Colvin"). This motion is based on and
20 supported by the following points and authorities, the Complaints on file in this case and by any
21 oral argument the Court may require or allow.

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I.
ARGUMENT

A. LEGAL STANDARD ON MOTION TO DISMISS

A complaint must include “[a] short and plain statement of ... claim[s] showing the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). When considering a motion to dismiss, the Court will accept all well-pleaded allegations of material fact as true, while legal conclusions are not entitled to the same presumption. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

A plaintiff must do more than assert “[t]hreadbare recitals of the elements of a cause of action.” *Id.* at 678 (internal citation omitted). Instead “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (internal citation and quote marks omitted). A facially plausible claim exists “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (internal citation omitted).

The U.S. Supreme Court’s decision in *Iqbal* states “that to satisfy Rule 8’s requirements, a complaint’s allegations must cross “the line from conceivable to plausible.”” *Hester v. Stout Management*, Case No. 2:20-cv-02115-APG-VCF, 2020 WL 7427522, at *1 (D. Nev. Dec. 18, 2020) *citing Iqbal*, 556 U.S. at 680 *citing Twombly*, 550 U.S. at 547.

B. PLAINTIFF’S FOURTH CAUSE OF ACTION FOR NEGLIGENT HIRING, TRAINING AND SUPERVISION FAILS TO ADDRESS THE FACT THAT THE CLAIM CONTINUES TO BE BASED ENTIRELY ON BOILERPLATE CONCLUSORY ALLEGATIONS

In order to succeed on a claim for negligent hiring, retention and supervision, a plaintiff must establish that: (1) defendant owed a duty of care to the plaintiff; (2) defendant breached that duty by hiring, retaining, and/or supervising an employee even though *defendant knew, or should have known, of the employee’s dangerous propensities*; (3) the breach was the cause of plaintiff’s injuries; and (4) damages. *Peterson v. Miranda*, 991 F. Supp. 2d 1109 (D. Nev. 2014).

On November 17, 2020, Defendant filed a motion to dismiss Plaintiff’s common law causes of action, including his claim for negligent hiring, training and supervision. (ECF No. 7.) On April 7, 2021, the Court granted Defendant’s motion to dismiss Plaintiff’s claim for negligent

1 hiring, training and supervision without prejudice. The Court's Report and Recommendation held
2 that,

3 A review of Plaintiff's Negligent Hire, Supervision, and Training
4 causes of action in his Complaint and proposed amended complaint
5 shows Plaintiff asserts only conclusory allegations that Defendant
6 breached a duty to Plaintiff when it failed to properly train and
supervise Plaintiff. ECF Nos. 1 ¶ 83; 12-1 ¶ 93. Plaintiff's
threadbare, conclusory allegations are insufficient to support this
claim under Rule 8, Fed. R. Civ. P. *Iqbal*, 556 U.S. at 678-79.

7 The Court does not find, however, that Plaintiff can assert no set of
8 facts that may allow his Negligent Hire, Supervision, and Training
9 claim to proceed. For this reason, the Court recommends Plaintiff
10 be given the opportunity to file a second amended complaint in
which he may attempt to state a Negligent Hiring, Supervision, and
Training claim upon which relief may be granted.

11 (ECF. No. 19.)

12 On May 18, 2021, Plaintiff filed his FAC. (ECF No. 21.) The FAC, however, fails to add
13 any actual facts to the Plaintiff's claim for negligent hiring, training and supervision. Instead,
14 Plaintiff simply inserted more conclusory allegations. The cause of action consists of the
15 following threadbare assertions:

16 75. In addition, M.J. Dean had a duty not to hire individuals with
17 a propensity towards committing unlawful acts against
18 Plaintiff including those of discrimination, harassment and
retaliation.

19 76. In violations of that duty, M.J. Dean injured Plaintiff by
20 failing to supervise, train, and hire appropriate personnel
21 which resulted in damages including, among others, loss of
22 Plaintiff's job and severe emotional distress including but
23 not limited to, great mental and emotional harm, anguish,
insecurity, damage to self-esteem and self-worth, shame and
humiliation, lack of appetite, loss of sleep, depression,
and/or anxiety.

24 77. Specifically, upon information and belief, M.J. Dean failed
25 to adequately train, hire and/or supervise its employees
26 and/or agents, including but not limited to Mr. Gutierrez,
27 regarding laws proscribing discrimination, harassment and
28 retaliating in a workplace.

(ECF No. 21, ¶¶ 75 – 77.)

1 Plaintiff's FAC fails to satisfy the second element of the claim (i.e., that Defendant knew,
2 or should have known, of the employee's dangerous propensities). Indeed, Plaintiff's FAC does
3 contain even a single factual alleged fact regarding how and/or when Defendant knew or should
4 have known that Plaintiff's supervisor, Kevin Gutierrez, or anybody else for that matter, would
5 discriminate and/or retaliate against Plaintiff. Instead, Plaintiff's FAC, like his initial complaint,
6 simply asserts overbroad legal conclusion that Defendant failed to properly supervise, train and
7 hire appropriate personnel "regarding laws proscribing discrimination, harassment and retaliating
8 in a workplace and breached that duty."

9 Plaintiff's allegations do not constitute facts; they are simply regurgitated boilerplate legal
10 elements relating to a cause of action for negligent hiring, training and supervision. Accordingly,
11 Plaintiff's claim should be dismissed with prejudice.

12 **II.**
13 **CONCLUSION**

14 Based on the foregoing, Plaintiff's Motion to Dismiss should be granted and Plaintiff's
15 Fourth Cause of Action for Negligent Hiring, Training and Supervision should be dismissed with
16 prejudice.

17 Dated: May 21, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed and served upon the following parties on May 21, 2021 through the Court's ECF system.

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